

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTHONY and GLADYS FLEETWOOD,)	
Husband and Wife; WOLVERINE,)	NO. CV-09-0152-LRS
INC., a Washington Corporation;)	
and REX and LUCINDA E. ROZMUS,)	ORDER RE: SUMMARY JUDGMENT
Husband and Wife,)	MOTIONS
)	
Plaintiffs,)	
)	
-vs-)	
)	
STANLEY STEEMER INTERNATIONAL,)	
INC., an Ohio corporation,)	
)	
Defendant.)	
)	

BEFORE THE COURT is Plaintiffs Lucinda and Rex Rozmus's Motion for Partial Summary Judgment, Ct. Rec. 79; Defendant Stanley Steemer International's Motion for Summary Judgment Regarding Rex and Lucinda Rozmus, Ct. Rec. 94; and Defendant Stanley Steemer International's Motion for Summary Judgment Regarding Fleetwood Plaintiffs, Ct. Rec. 99. These motions were heard with oral argument on June 10, 2010, at which time the court indicated the motions would be considered under advisement.

I. UNDISPUTED BACKGROUND FACTS

A. FACTS SPECIFIC TO ROZMUS PLAINTIFFS

Plaintiff Rex Rozmus operated a Stanley Steemer carpet cleaning business from August 1, 2003 until June 2, 2008. Mr. Rozmus and his family members had a history of business experience with Defendant

1 Stanley Steemer. Rozmus had 10-12 years of employment with Defendant
2 before becoming a franchisee. When purchasing the franchise rights from
3 Stanley Steemer, Mr. Rozmus first was given a copy of Stanley Steemer's
4 offering circular pursuant to Washington law and federal regulations. The
5 offering circular was accompanied by a transmittal letter. The offering
6 circular highlighted the integration clause in the Franchise Agreement
7 as an "important provision[]" of the agreement and explained the meaning
8 of that clause: "Only the terms of the Franchise Agreement are binding.
9 Any other promises or representations are unenforceable."

10
11 On August 1, 2003, Mr. Rozmus executed a Stanley Steemer
12 International, Inc. Franchise Agreement with Defendant Stanley Steemer
13 ("Franchise Agreement"). Beginning in late 2006 and continuing through
14 2007, Mr. Rozmus experienced cash flow problems which increased in
15 severity over time. Mr. Rozmus began to get behind on royalties and
16 other payments owing to Defendant. The Franchise Agreement provided that
17 Stanley Steemer could terminate the agreement if Mr. Rozmus failed to pay
18 any sum due to Stanley Steemer or any affiliate of Stanley Steemer within
19 the proper time for paying that debt.

20 By February 2, 2007, Mr. Rozmus was in default, owed Stanley
21 Steemer \$62,915.79 (with much of that money being 120 days past due), and
22 thus had materially breached the Franchise Agreement. Stanley Steemer
23 sent Mr. Rozmus a letter stating that Mr. Rozmus was in default of his
24 obligations under the Franchise Agreement. The February 2, 2007 letter
25 explained that Mr. Rozmus owed Stanley Steemer \$62,915.79, that a
26

1 significant portion of that debt was over 120 days past due, and that he
2 "now [had] thirty (30) days from the date of [his] receipt of this letter
3 in which to bring all of [his] past due obligations current." The
4 February 2, 2007 letter further explained that, if Mr. Rozmus was unable
5 to cure his default within the thirty day period, Stanley Steemer would
6 "have no alternative but to proceed to terminate [his] Franchise
7 Agreement in accordance with the appropriate provisions thereof."
8

9 Before the automatic termination of his Franchise Agreement at the
10 expiration of the cure period, Mr. Rozmus told Stanley Steemer that he
11 would not be able to cure within the thirty day cure period and asked
12 Stanley Steemer for more time to cure. On February 26, 2007, Stanley
13 Steemer mailed Mr. Rozmus an agreement that essentially operated as a
14 forbearance agreement. This agreement, entitled Franchise Termination
15 Agreement, acknowledged that the earlier Franchise Agreement was
16 terminated. However, it also set forth the terms and conditions under
17 which Stanley Steemer would give Mr. Rozmus time to cure his earlier
18 defaults and an opportunity to enter into a new Franchise Agreement. Mr.
19 Rozmus chose to ask for more time in which to cure his defaults and
20 signed the Franchise Termination Agreement.

21 Mr. Rozmus executed a promissory note dated February 28, 2007,
22 pursuant to the Franchise Termination Agreement. In doing so, Mr. Rozmus
23 promised to pay \$67,025.13 with interest thereon at the rate of ten
24 percent (10%) per annum. The principal sum and interest were due under
25 the note in forty-eight (48) consecutive equal monthly installments of
26

1 \$1,699.93.

2 Mr. Rozmus failed to make payments on the promissory note and failed
3 to stay current on his financial obligations to Stanley Steemer and on
4 payments due to third party creditors. Mr. Rozmus became increasingly
5 delinquent in his payment obligations from March 2007 through April 2008.
6 Mr. Rozmus defaulted on the Franchise Termination Agreement and was then
7 informed of that default. The Franchise Termination Agreement was
8 terminated in writing on April 25, 2008. As of April 30, 2010 the
9 balance due and owing on the note was approximately \$69,767.15

10
11 On April 30, 2008, Mr. Rozmus spoke with Ryan Jankowski, Vice
12 President and Corporate Counsel of Stanley Steemer regarding the
13 termination of his right to continue operating the Tri-Cities area
14 franchise. During this call, Mr. Rozmus asked for more time to cure and
15 acknowledged that he was incapable of curing his defaults. Mr. Rozmus
16 asked who was going to service customers until the territory could be
17 transitioned to a new owner. This was also a concern for Stanley Steemer.

18 On or about May 2, 2008, Stanley Steemer and Mr. Rozmus entered into
19 another agreement where they agreed that in exchange for Stanley Steemer
20 forgiving the unpaid bills Mr. Rozmus owed to it (\$102,273.84) and paying
21 his debts to third party creditors (\$213,726.16), Mr. Rozmus would
22 continue to operate the business until a new franchisee was found, and
23 would participate and assist in transitioning the franchise area to a new
24 owner. Stanley Steemer made the payments and forgave the bills, as
25 promised. Mr. Rozmus operated the business pursuant to this agreement
26

1 until approximately June 2, 2008 and assisted in the orderly transition
2 of the business to the new franchisee who took over the Tri-Cities area.

3 At no time between the time Mr. Rozmus was notified that the
4 Franchise Termination Agreement was being terminated and when the area
5 was transitioned to a new franchisee did Mr. Rozmus cure his defaults
6 (418-day extended period to cure granted pursuant to the Franchise
7 Termination Agreement.) Mr. Rozmus affirmatively told Stanley Steemer
8 he could not cure. It is undisputed that both parties performed those
9 duties each contracted for pursuant to the Franchise Termination
10 Agreement.
11

12 On June 4, 2008, Mr. Rozmus sent an e-mail to Mr. D. Ryan Jankowski¹
13 thanking him for helping him and informing Stanley Steemer that he had
14 sent his outstanding bills for Stanley Steemer to pay on his behalf.

15 **B. FACTS SPECIFIC TO FLEETWOOD PLAINTIFFS**

16 On January 1, 1997, Anthony Fleetwood acquired the Stanley Steemer
17 business for the Spokane market (Spokane County, Washington, and Kootenai
18 County, Idaho) from Dominique J. (D.J.) Krause. Mr. Fleetwood had a
19 great deal of experience in the carpet-cleaning business, having worked
20 at Stanley Steemer for twelve years prior to running his own Stanley
21 Steemer franchise. Mr. Fleetwood paid \$50,000 to the previous franchise
22 owner for the Stanley Steemer franchise for the Spokane market. Mr.
23 Fleetwood obtained financing for this transaction through Bank One, NA
24

25
26 ¹D. Ryan Jankowski is Vice President and Corporate Counsel of Stanley Steemer International, Inc.

1 ("Bank One"). Stanley Steemer guaranteed the Bank One loan to accommodate
2 the loan to Mr. Fleetwood.

3 Mr. Fleetwood established a revolving line of credit with Stanley
4 Steemer in the amount of \$50,000 on January 1, 1997. On January 2, 1997,
5 Mr. Fleetwood executed a Stanley Steemer International, Inc. Franchise
6 Agreement (the "Franchise Agreement") that gave Mr. Fleetwood the
7 franchise rights for the Spokane market. Stanley Steemer did not require
8 Mr. Fleetwood to pay an initial franchise fee or a transfer fee at the
9 time the purchase was made.

10
11 The Franchise Agreement expressly stated that no fiduciary
12 relationship exists between the parties. The Franchise Agreement also
13 stated that if the Franchise Owner (franchisee) fails to pay any sum due
14 to Stanley Steemer or any affiliate of Stanley Steemer within the time
15 for paying the same without penalty or if Franchise Owner fails to comply
16 with any of the substantial provisions of this agreement, then Stanley
17 Steemer could terminate the agreement. The Franchise Agreement also
18 contained an integration clause.

19 Before Mr. Fleetwood's purchase of the franchise business from Mr.
20 Krause, Stanley Steemer provided Mr. Fleetwood with a Uniform Franchise
21 Offering Circular that described the franchise operation and made certain
22 disclosures to him. The Offering Circular identified the integration
23 clause contained in Article XVII ¶ E as an "important provision" of the
24 Franchise Agreement and explained the meaning of that clause: "Only the
25 terms of the Franchise Agreement are binding. Any other promises or
26

1 representations are unenforceable."

2 On January 1, 1998, Mr. Fleetwood's line of credit was increased to
3 \$100,000. Mr. Fleetwood was only required to make quarterly interest
4 payments if he chose to draw on the line of credit. However, Mr.
5 Fleetwood was delinquent in the payment of royalties and other fees due
6 under the Franchise Agreement between 1997 and 2000.

7 In May of 2000, Stanley Steemer contacted Mr. Fleetwood to inform
8 him of these defaults and discuss his plans to cure. As a result of the
9 discussions, Mr. Fleetwood's past-due obligations to Stanley Steemer, the
10 Stanley Steemer line of credit and the Bank One indebtedness to which
11 Stanley Steemer was a guarantor were consolidated into a Promissory Note
12 dated May 30, 2000, in the principal amount of \$190,122.48 ("May 2000
13 Note"). Mr. Fleetwood continued to be delinquent in his payment
14 obligations to Stanley Steemer between May 2000 and June 2001 under both
15 the consolidated note and the Franchise Agreement.
16

17 On June 22, 2001, Stanley Steemer notified Mr. Fleetwood in writing
18 that he was delinquent in his payments owed to Stanley Steemer, resulting
19 in a material breach of the Franchise Agreement. In response to the June
20 22, 2001 letter, a new repayment plan was agreed to by the parties on
21 June 29, 2001. Following this June 29, 2001 arrangement, Mr. Fleetwood
22 continued to default on his payment obligations by failing to make
23 franchise royalty payments when due and failing to make payments under
24 the May 2000 note. By May 2002, Mr. Fleetwood's payment delinquencies
25 to Stanley Steemer totaled approximately \$247,157.71. On May 2, 2002,
26

1 Stanley Steemer issued to Mr. Fleetwood a "Notice to Cure Breach of
2 Franchise Agreement-Delinquent Royalty Fees."

3 The May 2002 notice to cure indicated the amounts due and that
4 failure to pay royalty fees due constituted a material breach of the
5 Franchise Agreement. The notice indicated that in accordance with
6 Article XIII.B.2 of the Franchise Agreement, Mr. Fleetwood had thirty
7 (30) days from the date of the receipt of the letter in which to bring
8 all of his royalty payment obligations current. Finally, the notice to
9 cure indicated that Stanley Steemer would proceed to terminate
10 Fleetwood's franchise and agreement in accordance with the appropriate
11 provisions if Mr. Fleetwood's payment obligations were not brought
12 current within the 30-day cure period.
13

14 Following the May 2002 notice to cure, Mr. Fleetwood notified
15 Stanley Steemer that he would be unable to cure his outstanding defaults
16 without additional assistance from Stanley Steemer. Stanley Steemer in
17 turn advised Mr. Fleetwood that it was unwilling to provide him with any
18 further assistance unless it was given adequate assurance that he would
19 perform as agreed.

20 On May 31, 2002, as a result of the foregoing discussions, the
21 parties entered into an agreement entitled "Franchise Termination
22 Agreement." Under this agreement (which recited termination of the
23 earlier Franchise Agreement), Mr. Fleetwood was allowed more time to cure
24 his defaults. He was permitted to continue operating the Stanley Steemer
25 business in the Spokane market on a day-to-day basis on the condition
26

1 that he comply with the terms of the Franchise Termination Agreement,
2 cure his prior defaults under the original Franchise Agreement, comply
3 with the incorporated terms of the original Franchise Agreement, execute
4 a note² in favor of Stanley Steemer, and to "make all payments required
5 thereunder in a timely manner." The Franchise Termination Agreement
6 contained an integration clause. (Agreement ¶ 7.)

7
8 In October 2002, Mr. Fleetwood requested additional credit from
9 Stanley Steemer to pay for equipment he had purchased for use in running
10 the business. Stanley Steemer agreed to provide credit to Mr. Fleetwood,
11 and that obligation was consolidated into Mr. Fleetwood's existing
12 obligations and memorialized in an Addendum³ to the Stanley Steemer
13 International, Inc. Franchise Termination Agreement ("Addendum") dated
14 October 23, 2002. Following execution of the Addendum, Mr. Fleetwood
15 failed to make two of the next three payments due under the Addendum and
16 became increasingly delinquent on his payment obligations from February
17 2003 through April 2004. By April 2004, Mr. Fleetwood's payment
18 delinquencies under the Franchise Termination Agreement and the October
19 2002 note totaled \$360,590.

20 On April 27, 2004, as a result of these delinquencies, the parties
21 entered into a Second Addendum ("Second Addendum") to the Franchise
22

23 ²Stanley Steemer consolidated all of Mr. Fleetwood's debts with
24 Stanley Steemer into a new promissory note in the principal amount of
25 \$254,162.58.

26 ³Pursuant to the Addendum, Mr. Fleetwood executed a new promissory
note to Stanley Steemer, dated October 23, 2002, in the principal amount
of \$277,160.83.

1 Termination Agreement. Under this Second Addendum, Mr. Fleetwood's
2 past-due obligations were consolidated into a new note in the principal
3 amount of \$360,590 that provided for 0% interest and no payments for one
4 year. These terms allowed Mr. Fleetwood additional cash flow to meet his
5 obligations.

6 Mr. Fleetwood was not able meet the payment obligation under the
7 2004 agreement. As a result, the parties entered into a Third Addendum
8 to the Franchise Termination Agreement on May 5, 2005. In connection
9 with the Third Addendum, Mr. Fleetwood issued a new promissory note to
10 Stanley Steemer dated May 5, 2005, in the principal amount of \$360,590.
11 The May 2005 note called for interest at 8% per annum, but amounts due
12 under the note were to be paid as an additional 3% of Mr. Fleetwood's
13 gross sales from his business until paid in full.

14 On or about August 1, 2005, Mr. Fleetwood executed Lease Agreement
15 #2966.01 ("Lease #2966.01"), in connection with his lease of three 2005
16 Ford E250 vans from Huntington National Bank. The lease was executed on
17 behalf of Wolverine, Inc.,⁴ and guaranteed by Mr. Fleetwood. Pursuant to
18 the terms of Lease #2966.01, the Plaintiffs were obligated to pay
19 \$1,953.71 per month for 84 months. Stanley Steemer guaranteed the
20 payments due and owing under Lease #2966.01. On or about September 23,
21 2005, Mr. Fleetwood executed Lease Agreement #2966.02 ("Lease #2966.02"),
22 in connection with his lease of two additional 2005 Ford E250 vans from
23
24

25
26 ⁴In addition to the individual Plaintiffs, Wolverine, Inc., the
company formed by Mr. Fleetwood through which to operate his franchise,
was also named as a plaintiff.

1 Huntington National Bank.⁵ The lease was executed on behalf of
2 Wolverine, Inc., and guaranteed by Mr. Fleetwood, individually. Pursuant
3 to the terms of Lease #2966.02, the Plaintiffs were obligated to pay
4 \$1,302.43 per month for 84 months. Stanley Steemer guaranteed the
5 payments due and owing under Lease #2966.02.

6 Beginning in 2007, Mr. Fleetwood became increasingly delinquent in
7 the payment of his monthly royalties and other obligations due under the
8 Franchise Termination Agreement, as amended by the Third Addendum. From
9 July through September 2008, Stanley Steemer and Mr. Fleetwood had
10 numerous discussions concerning Mr. Fleetwood's plans for becoming
11 current on his past-due obligations to Stanley Steemer and payments going
12 forward. Stanley Steemer determined that Mr. Fleetwood would be unable
13 to satisfy his past-due obligations and to keep current on ongoing
14 obligations as they came due. As a result, Stanley Steemer decided to
15 end its relationship with Mr. Fleetwood.

17 On October 24, 2008, Stanley Steemer issued a Notice of Termination
18 to Mr. Fleetwood pursuant to its rights under the Franchise Termination
19 Agreement. On October 30, 2008, Mr. Fleetwood, through counsel, objected
20 to the Notice of Termination, claiming that he had not been provided an
21 adequate opportunity to cure his defaults under the Franchise Termination
22 Agreement. Stanley Steemer disagreed that its October 24, 2008 letter
23

25 ⁵Subsequent to the execution of Lease #2966.01, Huntington assigned
26 its rights under Lease #2966.01 and Stanley Steemer's guaranty to Wells
27 Fargo Equipment Finance ("Wells Fargo"). Huntington retained its right
28 to receive lease payments under Lease #2966.02.

1 violated Washington Franchise Protection Act ("FIPA") in any way. To
2 avoid a dispute on the issue, Stanley Steemer formally rescinded the
3 Notice of Termination and issued a Notice to Cure on October 31, 2008,
4 providing Mr. Fleetwood an additional thirty days to cure his various
5 defaults under the Franchise Termination Agreement.

6 On November 26, 2008 – just four days before the expiration of the
7 thirty-day cure period – Mr. Fleetwood filed for bankruptcy protection
8 under Chapter 11 of the United States Bankruptcy Code, Case No. 08-04986-
9 PCW11, United States Bankruptcy Court, Eastern District of Washington.
10 Because of the automatic stay imposed by the bankruptcy filing, Mr.
11 Fleetwood continued to operate the franchise business using Stanley
12 Steemer's name, trademarks, and proprietary system while the bankruptcy
13 case was pending, but he failed to remain current on his royalty and
14 other payment obligations. On August 24, 2009, Mr. Fleetwood dismissed
15 the bankruptcy case, terminating the effect of the automatic stay. Mr.
16 Fleetwood has expressly admitted that he was unable to cure during this
17 time. Mr. Fleetwood has never cured his defaults.

18 On August 28, 2009, Stanley Steemer sent a letter to Mr. Fleetwood,
19 in care of his attorney, confirming the termination of his right to
20 continue operating the franchise. Mr. Fleetwood ceased operating the
21 Stanley Steemer franchise as of August 31, 2009. Notwithstanding the
22 provision of the Franchise Agreement concerning competition, Mr.
23 Fleetwood continues to operate a competing carpet-and-upholstery cleaning
24 business, called Tedy Fresh. Through April 3, 2010, Tedy Fresh appears
25
26

1 to have generated gross receipts of \$204,927.43. Mr. Fleetwood paid
2 \$2,337.59 in royalties⁶ shortly before the hearing scheduled on Stanley
3 Steemer's motion for preliminary injunction, which was based, in part,
4 on his failure to pay post-termination royalties. After the preliminary
5 injunction motion was resolved, Mr. Fleetwood did not pay any further
6 post-termination royalties.

7
8 The Fleetwood Plaintiffs have defaulted on their obligations to make
9 payments under Lease #2966.01 and Lease #2966.02 for the vans. As a
10 result of the defaults, both Huntington and Wells Fargo notified
11 Wolverine of default. They subsequently demanded payment from Stanley
12 Steemer under Stanley Steemer's guaranty of the lease obligations. In
13 response, Stanley Steemer paid to Wells Fargo the sum of \$76,947.96 under
14 Lease #2966.01 and to Huntington the sum of \$61,336.81 under Lease
15 #2966.02. As of April 30, 2010, Stanley Steemer indicates Wolverine,
16 Inc. owes \$138,284.77 for reimbursement of amounts paid by Stanley
17 Steemer under the vehicle lease guarantees.

18 Stanley Steemer indicates that as of April 30, 2010, Mr. Fleetwood
19 owed to Stanley Steemer, the following amounts totaling \$606,348.82 plus
20 interest:

- 21 (a) Under the May 2005 note, \$356,371.91 in principal and
22 interest;
23 (b) Under the Franchise Agreement and Franchise Termination
24 Agreement (covering amounts arising on and after May 2005):

25 ⁶Article XV ¶ B of the Franchise Agreement deals with "Competition
26 After Termination." If Franchise Owner competes within a two-year period
after termination, he/she must pay Stanley Steemer a monthly royalty
payment equal to 7% of the gross receipts received by Franchise Owner.

1 \$100,581.78 for past-due royalty payments, \$45,098.28 for
2 advertising and marketing fees, \$10,886.45 for local telephone
3 fees, \$1,225.83 for parts and miscellaneous invoices, and
4 \$11,034.86 for service charges, for a total exceeding
5 \$168,827.20, plus interest;

6 © For reimbursement of one-half of the amounts paid by Stanley
7 Steemer under the vehicle lease guarantees, the amount of
8 \$69,142.39;

9 (d) For violations of the noncompete provision, \$12,007.32,
10 plus 7% of all sales from all carpet-and-upholstery cleaning
11 performed by any business owned or operated by Mr. Fleetwood
12 from January 2010 through August 29, 2011;

13 (e) Plus interest at the default rate of 18% per annum as
14 provided in the Franchise Agreement.

15 **II. SUMMARY JUDGMENT STANDARD**

16 On a motion for summary judgment, the evidence must be viewed in the
17 light most favorable to the non-moving party. See *Roberts v. Continental*
18 *Insurance, Co.*, 770 F.2d 853, 855 (9th Cir.1985). Summary judgment should
19 be granted if there is no genuine issue as to any material fact and the
20 moving party is entitled to a judgment as a matter of law. *Triangle*
21 *Mining Co., Inc. v. Stauffer Chemical Co.*, 753 F.2d 734, 738 (9th
22 Cir.1985).

23 **III. ANALYSIS OF SUMMARY JUDGMENT MOTIONS**

24 **A. Plaintiffs Rozmus's Motion for Partial Summary Judgment**

25 The narrow issue before the court on Plaintiffs' motion for partial
26 summary judgment is whether Stanley Steemer has violated Washington's
Franchise Investment Protection Act, or FIPA, through its termination of
Mr. Rozmus's franchise in 2008. Rozmus Plaintiffs argue that the
franchise termination agreement, while it terminated the earlier
franchise agreement, is actually a new franchise agreement by its terms

1 and therefore the notice of default and opportunity to cure had to be
2 given again.

3 Defendant Stanley Steemer argues that it complied with FIPA. The
4 Franchise Agreement was entered into between Mr. Rozmus and Stanley
5 Steemer on August 1, 2003. On February 2, 2007, Stanley Steemer gave Mr.
6 Rozmus a notice of default in writing, explaining the sums which were in
7 default and that he was entitled to a 30-day cure period, all in
8 compliance with FIPA. After defaulting on his obligations, Mr. Rozmus
9 had three options: (1) he could cure his default; (2) he could not cure
10 his default and allow his franchise to terminate; or (3) he could ask for
11 more time to cure his default. Mr. Rozmus chose to ask for more time.
12 In February 2007, he voluntarily signed the Franchise Termination
13 Agreement which had been mailed to him. There is no evidence in the
14 record that he sought legal advice or advice from a third party financial
15 advisor. The Franchise Termination Agreement was a forbearance agreement
16 that allowed Mr. Rozmus additional time to cure his defaults. It set
17 forth the payment obligations he was agreeing to effectuate a cure of his
18 defaults.
19

20 The Court finds that Mr. Rozmus's franchise was terminated after
21 Stanley Steemer had both provided thirty days notice of default and an
22 opportunity to cure, and after an extended period to cure. Mr. Rozmus
23 was clearly in default of his obligations under the Franchise Termination
24 Agreement and Mr. Rozmus was well aware of his default. The Franchise
25 Termination Agreement was terminated in writing on April 25, 2008. Mr.
26

1 Rozmus continued to operate the business for thirty-eight days following
2 the April 25, 2008 letter, until approximately June 2, 2008, and did not
3 cure his default during that period. Stanley Steemer did not terminate
4 Mr. Rozmus's franchise rights improperly or without proper notice
5 pursuant to FIPA.

6 The Franchise Termination Agreement provided a procedure by which
7 Mr. Rozmus could continue operating the carpet cleaning business while
8 allowing him additional time to cure his defaults. Most importantly, the
9 agreement expressly confirmed the termination of the Franchise Agreement.
10 In this regard, the Franchise Termination Agreement stated:
11

12 The parties desire to acknowledge and confirm the
13 termination of the Franchise Agreement, but to
14 provide a procedure by which Franchise Owner may
15 continue to operate a Stanley Steemer carpet
16 cleaning business in the Franchise Area and obtain
the option to enter a new Franchise agreement for
the Franchise Area by complying with all terms
hereof.

17 The Franchise Termination Agreement did not indicate or imply that
18 it was a new Franchise Agreement, as Plaintiffs assert. In fact,
19 Paragraph 5 of the Franchise Termination Agreement provided that, if Mr.
20 Rozmus had paid in full the promissory note discussed and was otherwise
21 in full compliance with the terms of the agreement, he would be allowed
22 to enter into a new Franchise Agreement with Stanley Steemer for the same
23 territory and under the same terms and conditions of his original
24 Franchise Agreement. Paragraph 5 reads, in pertinent part:
25

26 5. Upon payment in full of the Note and provided
that Franchise Owner is then in full compliance with

1 all terms of this Agreement, SSI shall then grant
2 Franchise Owner a one-time option to enter into a
3 new Franchise Agreement with SSI for the Franchise
4 Area upon the identical terms and conditions of the
5 Franchise Agreement. . . .

6 It is undisputed that Mr. Rozmus (and Mr. Fleetwood)⁷ never complied with
7 the terms of their respective Franchise Termination Agreements. For the
8 foregoing reasons, the Court concludes that Plaintiffs' Motion for
9 Partial Summary Judgment should be denied.

10 **B. Defendant's Motion for Summary Judgment Regarding Rozmus**

11 Defendant explains that on August 1, 2003, Mr. Rozmus and Stanley
12 Steemer entered the Franchise Agreement, a fully integrated contract,
13 that governed the relationship between the parties. This agreement
14 required Mr. Rozmus to, among other things, pay a monthly royalty payment
15 for his use of the Stanley Steemer name, trademarks, goodwill, and
16 proprietary cleaning system. Mr. Rozmus was also required to pay a
17 National Advertising fee. Failure to pay these obligations, or to pay
18 debts owed to third parties, was designated a material breach, allowing
19 Stanley Steemer to terminate the franchise. By February 2, 2007, Mr.
20 Rozmus was in default, owed Stanley Steemer \$62,915.79, and thus had
21 materially breached the Franchise Agreement. Accordingly, on February 2,
22 2007, and pursuant to FIPA, Stanley Steemer sent Mr. Rozmus a letter
23 stating that Mr. Rozmus was in material default and that he "now [had]
24 thirty (30) days from the date of [his] receipt of this letter in which
25

26 ⁷Mr. Fleetwood's Franchise Termination Agreement was identical in
the provisions at issue.

1 to bring all of [his] past due obligations current." If he was unable to
2 cure his default within that time, the letter stated, Stanley Steemer
3 would "have no alternative but to proceed to terminate [his] Franchise
4 Agreement in accordance with the appropriate provisions thereof."

5 Before the franchise automatically terminated at the end of the cure
6 period, Mr. Rozmus told Stanley Steemer that he would not be able to cure
7 within that period and asked Stanley Steemer for more time to cure. On
8 February 26, 2007, Stanley Steemer mailed Mr. Rozmus a forbearance
9 agreement, entitled Franchise Termination Agreement, which set forth the
10 terms and conditions under which Stanley Steemer would forbear from
11 exercising its right to terminate Mr. Rozmus's franchise and would allow
12 him additional time to cure his defaults. The Franchise Termination
13 Agreement executed by the parties explicitly recognized that Mr. Rozmus
14 "ha[d] defaulted in [his] payment obligations to SSI under the Franchise
15 Agreement" and "owe[d] SSI the sum of \$67,025.13 (the 'Delinquent
16 Balance')."

17
18 Pursuant to the Franchise Termination Agreement, Stanley Steemer
19 gave Mr. Rozmus additional time to cure. Mr. Rozmus was to execute a
20 promissory note securing his then-due obligation to Stanley Steemer and
21 to stay current with future obligations. Finally, the Franchise
22 Termination Agreement provided that, if Mr. Rozmus defaulted under that
23 agreement, Stanley Steemer could immediately terminate that agreement.
24 The Franchise Termination Agreement also contained an integration clause.
25

26 Mr. Rozmus breached the agreement. He was told of the default, and

1 was then informed of that default in writing by a letter dated April 25,
2 2008. He failed to stay current on his royalty and promissory note
3 payments, and on other payments due to third party creditors. Following
4 the notice terminating the agreement, Stanley Steemer and Mr. Rozmus
5 entered into another agreement in which they agreed that, in exchange for
6 Stanley Steemer forgiving the unpaid bills Mr. Rozmus owed to it
7 (\$102,273.84) and paying his debts to third-party creditors
8 (\$213,726.16), Mr. Rozmus would continue to operate the business and
9 cooperate in transitioning the franchise area to a new owner. Stanley
10 Steemer performed under this agreement (paying and/or absorbing costs and
11 creditor bills attributable to Mr. Rozmus) in excess of \$316,000, and Mr.
12 Rozmus operated the business until approximately June 2, 2008, when a new
13 franchisee took over the franchise area. Although not a necessary
14 determination for purposes of this order, the latter agreement appears
15 to have been motivated, in part, by concerns that both parties had
16 related to the continued service of current customers.

17
18 Defendant argues that despite the existence of a fully integrated
19 (termination) contract setting forth the rights and responsibilities of
20 the parties and performance by both parties thereto, Mr. Rozmus filed a
21 seven-count complaint seeking alleged damages for breach of fiduciary
22 duty, unjust enrichment, failure of consideration, breach of
23 contract/breach of the implied covenant of good faith and fair dealing,
24 equitable estoppel, and for alleged violations of Washington's Franchise
25 Investment Protection Act and Consumer Protection Act. Defendant Stanley
26

1 Steemer asserts it is entitled to summary judgment on each of these
2 claims.

3 Defendant asserts that if the parties' agreement in 2008 is not
4 enforced (in which Mr. Rozmus agreed to participate and assist in the
5 transition of the franchise to a new franchisee in return for Stanley
6 Steemer's promise to forgive and pay off debts totaling \$316,000) then
7 Stanley Steemer is entitled to repayment of the debts it forgave based
8 on an unjust enrichment theory.

9
10 Alternatively, Defendant argues it is entitled to judgment on the
11 promissory note on which Mr. Rozmus defaulted in the amount of \$69,677.15
12 plus interest from April 30, 2010; judgment for past due obligations owed
13 by Mr. Rozmus for his defaults under both the Franchise Agreement and the
14 Termination Agreement in the amount of \$64,254.71 plus interest from
15 April 30, 2010; and judgment for unjust enrichment in the amount of
16 \$213,726.16.

17 The Court will address each claim, noting that it has determined
18 above that the termination of Plaintiff Rozmus was not a violation of
19 FIPA with respect to notice and opportunity to cure.

20 **1. Breach of Fiduciary Duty**

21 Plaintiffs claim that Stanley Steemer breached fiduciary duties
22 allegedly owed to them by "[e]ncouraging and soliciting Fleetwood and
23 Rozmus to incur substantial debt to [Stanley Steemer] in order to permit
24 them to purchase . . . franchise rights, and operating Stanley Steemer
25 franchise businesses, with the knowledge the franchisees were
26

1 undercapitalized and likely to fail over time." (1st Am. Compl. ¶ 1.3.1.)
2 As a result, Plaintiffs claim that Stanley Steemer "knew or should have
3 known that [Fleetwood and] Rozmus eventually would reach the point where
4 [Fleetwood's and] Rozmus' debt obligation to [Stanley Steemer] would
5 overwhelm the business and cause it to fail." (Id. ¶¶ 4.16, 5.21.)

6 Defendant contends that the Franchise Agreement clearly states that
7 there is no fiduciary relationship between the parties and that these
8 franchise owners are independent businessmen. In light of that express
9 and enforceable provision, Defendant argues that Plaintiffs' breach of
10 fiduciary claim should be denied.

11 Plaintiffs, on the other hand, ask this Court to find that, despite
12 the express disclaimer language in the franchise agreement, a fiduciary
13 duty existed on the part of the franchisor towards its franchisees,
14 requiring the franchisor to act in the best interest of the franchisee.
15 Plaintiffs urge that inherent in a franchise relationship is a fiduciary
16 duty. Specifically, Mr. Rozmus argues that Defendant Stanley Steemer
17 breached a fiduciary duty to him by allowing him to purchase and operate
18 a franchise business while allegedly undercapitalized and by terminating
19 his franchise rights following his defaults. Finally, Mr. Rozmus argues
20 that he had reason to place particular confidence and trust in the
21 franchisor Stanley Steemer.

22 The Court concludes that, as a matter of law, no breach of fiduciary
23 duty occurred under the specific facts of this case. The court reaches
24 its conclusion based in significant part on the fully integrated contract
25
26

1 (Franchise Agreement) that Mr. Rozmus freely entered into with Stanley
2 Steemer. The Franchise Agreement contained the following provision:

3 Article XVII ¶ E:

4 Entire Agreement. This agreement contains the entire
5 agreement of the parties and no representation,
6 inducements, promises, or agreement, oral or
7 written, not included in this agreement shall be of
any force and effect.

8 In addition to the integration clause, the Franchise Agreement
9 expressly provided that any change or modification had to be in writing:

10 Article XVII ¶ B:

11 Amendment. No change or modification in this
12 Agreement shall be valid unless the same be in
writing signed by the parties.

13 Furthermore, most courts have rejected the theory that a franchise
14 relationship creates a fiduciary obligation in any
15 traditional sense.⁸ This Court, however, recognizes that a fiduciary
16 duty nevertheless might be found to exist where the dealings between a
17 franchisor and its franchisee suggest that the franchisee had reason to
18 place particular confidence and trust in the franchisor.
19

20 For example, the Fifth Circuit Court of Appeals in *Carter Equipment*
21 *Co. v. John Deere Industrial Equipment Co.*⁹ acknowledged that
22

23 ⁸Lee A. Rau, *Implied Obligations in Franchising: Beyond*
24 *Terminations*, 47 Bus. Law. 1053, 1061-62, n.49 (1992) (listing cases);
25 *Corp v. Atlantic Richfield Co.*, 122 Wash.2d 574, 586-87 (1993) (citing
26 Rau, *supra*, at 1075 (recognizing that a franchise relationship is a
business rather than a fiduciary relationship)).

⁹681 F.2d 386 (5th Cir.1982).

1 "[o]rdinarily, courts do not impose fiduciary duties upon parties to
2 contractual agreements," but held that, under Mississippi law, "[a]
3 fiduciary relationship may arise if the appropriate facts are present."¹⁰
4 The court ruled that the existence of such a relationship was a jury
5 question and required proof that the parties were engaged in activity
6 "for the benefit of both," and had reposed "express trust or confidence
7 in one another."¹¹ The court also suggested, however, that such a
8 relationship could be disclaimed, or at least limited, by the express
9 terms of the franchise agreement.¹² It stated that such an agreement may
10 define the "individualized interests" of the parties and observed the
11 following:
12

13 If the parties, in seeking their individualized
14 interests, comply with the terms of a contract in
15 which they are also parties, it would be difficult
16 to find a breach of a fiduciary duty. Although
17 fiduciaries have mutual interests, they also have
18 individual goals. If part of their relationship is
19 set out in a contract, the parties have
20 affirmatively recognized, in part, those individual
21 interests. Unless the contractual terms are
22 unconscionable, illegal, or violative of public
23 policy, fiduciaries, as a practical matter,
24 acknowledge that activity in conformance with the
25 terms of the contract cannot amount to misconduct
26 that constitutes a breach of a fiduciary duty.

21 *Carter Equip. Co.*, 681 F.2d at 392 n.14.

22 The Court notes the Franchise Agreement contained the following
23

24 ¹⁰*Id.* at 390.

25 ¹¹*Id.* at 391.

26 ¹²*Id.* at 392.

1 provision:

2 Article X ¶ A:

3 Independent Contractor. Franchise Owner is an
4 independent contractor and is not an agent, partner,
5 joint venturer or employee of Stanley Steemer, and
6 **no fiduciary relationship between the parties**
7 **exists.** Franchise Owner shall have no right to bind
8 or obligate Stanley Steemer in any way nor shall any
9 representation be made that Franchise Owner has any
10 right to do so. Stanley Steemer shall have no
11 control over the terms and conditions of employment
12 of Franchise Owner's employees. [Emphasis added.]

13 This Court does not find the contractual terms of the parties'
14 Franchise Agreement unconscionable, illegal, or violative of public
15 policy. Moreover, the Court has no authority to override express
16 provisions of a franchise agreement unless a franchisee can demonstrate
17 that the provisions were unconscionable at the time the agreement was
18 made. Mr. Rozmus has not demonstrated such. For these reasons,
19 Plaintiff Rozmus's breach of fiduciary duty claim is denied and summary
20 judgment on this claim is granted in favor of Defendant.

2. Unjust Enrichment

21 Mr. Rozmus claims that Stanley Steemer was unjustly enriched by
22 acquiring his franchise, including goodwill, without fair compensation.
23 (Am. Compl. ¶ 6.1.4.) Defendant asserts that this claim must fail because
24 no unjust enrichment claim exists when the parties have entered into an
25 express contract. Such claim is even less viable when a party is
26 attempting to contravene the express terms of a contract.

Unjust enrichment exists if one party is enriched at another's
expense. The elements of an unjust enrichment claim are: (1) one party

1 must have conferred a benefit to the other; (2) the party receiving the
2 benefit must have knowledge of that benefit; and (3) the party receiving
3 the benefit must accept or retain the benefit under circumstances that
4 make it inequitable for the receiving party to retain the benefit without
5 paying its value. *Cox v. O'Brien*, 150 Wash. App. 24, 37 (2009).

6 In the instant matter, the Franchise Agreement and Franchise
7 Termination Agreement govern the franchise relationship between Stanley
8 Steemer and Mr. Rozmus. The Court finds these agreements preclude Mr.
9 Rozmus's unjust enrichment claim. Specifically, those contracts govern
10 the rights and obligations of the parties upon termination. The Franchise
11 Agreement expressly provides:
12

13 Article V ¶ F:

14 Goodwill. Franchise Owner acknowledges and expressly
15 agrees that any and all goodwill associated with the
16 Stanley Steemer System and identified by the Stanley
17 Steemer Trademarks shall inure directly and
18 exclusively to the benefit of Stanley Steemer and is
19 the property of Stanley Steemer, and that upon the
20 expiration or termination for whatever reason of
21 this agreement, no monetary amount shall be assigned
22 as attributable to any goodwill associated with any
23 of Franchise Owner's activities in the operation of
24 the license granted herein, or Franchise Owner's use
25 of the Stanley Steemer System or the Stanley Steemer
26 Trademarks.

21 The Court also notes that at the time of final termination, Mr.
22 Rozmus owed Stanley Steemer and other creditors significant sums
23 (approximately \$316,000), which Stanley Steemer either forgave or paid
24 on his behalf. If the May 2, 2008 agreement between the parties was to
25 be found unenforceable (this Court does not so find), that consideration
26

1 would need to be taken into account pursuant to a reverse unjust
2 enrichment theory.

3 It follows that because Stanley Steemer exercised rights expressly
4 granted by contract, and because the contract specifically provided that
5 Stanley Steemer owned all associated goodwill, which is not unusual in
6 a franchise arrangement, Mr. Rozmus's unjust enrichment claim is without
7 merit. Moreover, there is no evidence before this Court of actual unjust
8 enrichment received by Stanley Steemer.

9 **3. Failure of Consideration**

10 Although not entirely clear, Mr. Rozmus seeks a declaration that the
11 Franchise Agreement, Termination Agreement, and related promissory notes
12 are unenforceable because there was a failure of consideration with
13 respect to any obligations that he would have to Stanley Steemer.

14 Defendant asserts that Stanley Steemer provided the significant,
15 material, and valuable consideration due to Mr. Rozmus under the
16 Franchise Agreement and the Franchise Termination Agreement. More
17 specifically, Defendant explains that Mr. Rozmus was granted the
18 necessary licenses under the Franchise Agreement and there is no dispute
19 that Mr. Rozmus used Stanley Steemer's name, trademarks, goodwill, and
20 proprietary system from 2003 through June 2, 2008.

21 Under Washington case law, failure of consideration occurs only when
22 a party fails to transfer "a significant, material and valuable portion
23 of the consideration to be transferred." *Krause v. Mariotto*, 66 Wash.2d
24 919, 920 (1965). This Court is hard-pressed to find what portion of
25
26

1 consideration Defendant Stanley Steemer failed to transfer with respect
2 to Mr. Rozmus. According, Plaintiffs' failure of consideration claim is
3 denied.

4 **4. Breach of Contract/Breach of the Implied Covenant of Good**
5 **Faith and Fair Dealing**

6 As to the alleged contractual breach, Mr. Rozmus's complaint alleges
7 that Stanley Steemer breached its obligation to deal with Mr. Rozmus in
8 good faith by failing to process the Yakima area franchise right transfer
9 application on a timely basis. (Am. Compl. ¶ 5.27.)

10 Defendant argues that the Franchise Agreement and Franchise
11 Termination Agreement expressly prohibit Mr. Rozmus from selling his
12 franchise rights if he was in default. It is undisputed that Mr. Rozmus
13 was in default under the Franchise Agreement and Franchise Termination
14 Agreement at the time of this alleged application. Defendant explains
15 that because Mr. Rozmus did not satisfy his financial obligations under
16 the contracts, he was contractually prohibited from selling his franchise
17 rights. Defendant concludes there is no factual or legal support for the
18 claim that Stanley Steemer breached any contractual obligations. Stanley
19 Steemer has performed all of its obligations under the contracts.
20

21 The Court has found, that Stanley Steemer properly exercised its
22 contractual right to terminate Mr. Rozmus's franchise rights. Plaintiffs
23 have not shown that Defendant arguably breached its contractual
24 obligations under the facts of this case. As for the alleged breach of
25 the implied covenant of good faith and fair dealing portion of this
26 claim, the Plaintiffs appear to be arguing the common law principle,

1 inasmuch as the duty of "good faith and fair dealing" is inherent in
2 every business relationship.

3 The covenant of good faith and fair dealing is applied in
4 franchising as a litigation tool because of the doctrine's malleable
5 nature and uncertainties inherent in franchise relationships.¹³ The
6 covenant is also applied to both parties to a franchise agreement. The
7 courts recognize that the good faith obligation is most often applied to
8 the party assuming discretionary control in the agreement. *Id.* In this
9 case, Stanley Steemer terminated Plaintiffs for good cause, and
10 specifically for defaulting on their obligations. Under FIPA, the
11 franchisor needs "good cause" to terminate the franchise. "Good cause"
12 is often defined to be the failure of the franchisee to comply with a
13 lawful provision of the franchise agreement after being given the
14 opportunity to cure that failure. RCW 19.100.180(2)(j).

16 Additionally, Defendant Stanley Steemer's failure to process the
17 Yakima area franchise right transfer application was based on Plaintiffs'
18 default. The Franchise Agreement and Franchise Termination Agreement
19 expressly prohibited Mr. Rozmus from selling his franchise rights if he
20 was in default. The applicable provision of the Franchise Agreement
21 reads:

22 / / /
23
24

25 ¹³W. Michael Garner, *The Implied Covenant of Good Faith in*
26 *Franchising: A Model for Discretion*, 20 Okla. City U. L. Rev. 305, 306
(1995).

1 Article XII ¶ A:

2 Assignment Conditions. Franchise Owner's interest
3 in, and obligations under, this Agreement may be
4 assigned, transferred, pledged, mortgaged,
5 hypothecated, or in any manner encumbered only if .
6 . . Franchise Owner has paid all obligations due to
7 Stanley Steemer and any other creditor arising from
8 the activities permitted under this Agreement.

9 The implied obligation of good faith and fair dealing is designed
10 to protect the reasonable expectations of the parties to a contract. The
11 Court is reluctant to use the covenant as a basis for redefining the
12 parties' relationship or for imposing unanticipated burdens or
13 limitations on one of the parties. At the outset of a franchise
14 relationship there is undoubtedly an expectation on the part of all
15 concerned that the system will grow and prosper. Reasonable expectations
16 obviously cannot be judged solely on the basis of the gains anticipated
17 by the contracting parties. The downside also must be recognized, as must
18 the need of franchisors to innovate and respond to general market
19 conditions. Moreover, parties to a contract may have different
20 expectations, further complicating a court's task in finding implied
21 obligations to exercise discretion and judgment in a particular manner.
22 As such, courts have tended to imply contract obligations only in very
23 limited circumstances.¹⁴

24 The argument advanced by Plaintiffs is to the effect that Stanley
25 Steemer encouraged Plaintiffs to incur greater debt to "grow the

26 ¹⁴See, e.g., *Triangle Mining Co. v. Stauffer Chem. Co.*, 753 F.2d 734,
739 (9th Cir 1985).

1 business" volume while not being overly concerned about the load of debt
2 being incurred¹⁵. Noting that Plaintiffs had substantial business
3 experience with Stanley Steemer and that the statements being alleged are
4 vague, devoid of factual specificity and in the nature of readily
5 recognizable opinions expressed as a hope for the future, the Court finds
6 no material questions of fact related to their representations, if they
7 occurred, remain for resolution.

8 The Court declines to find that Defendant breached the implied
9 covenant of good faith and fair dealing concerning Mr. Rozmus. This
10 claim is therefore denied and summary judgment granted in Defendant's
11 favor.
12

13 5. Equitable Estoppel

14 Mr. Rozmus claims that the defense of equitable estoppel acts to
15 prevent Stanley Steemer's termination of his franchise rights. Defendant
16 argues that the contracts explicitly stated in plain language that his
17 franchise rights would be terminated if he failed to pay his obligations.
18 Mr. Rozmus failed to pay, and Stanley Steemer asserted its rights under
19 the contracts.

20 As a matter of law the Court found above that the termination was
21 not in violation of FIPA and that Defendant asserted its rights under the
22 express language of the contracts. In light of the integrated contracts,
23 no oral statement can properly change their unambiguous terms. Nor can
24

25 ¹⁵The Court notes that on at least one occasion, Mr. Fleetwood
26 requested additional credit from Stanley Steemer during his time of
default.

1 Mr. Rozmus properly claim that providing him with an additional chance
2 to fulfill his promise to cure meant that Stanley Steemer waived its
3 right to terminate him. This is so because the Franchise Agreement
4 specifically provides that "[t]he failure of Stanley Steemer to terminate
5 this Agreement after any default hereunder . . . shall not waive Stanley
6 Steemer's right to terminate the Agreement in the event of the
7 continuation of such default or the occurrence of any new event of
8 default."

9
10 The elements of equitable estoppel are: (1) a prior admission,
11 statement, or act that is inconsistent with a later claim by Stanley
12 Steemer; (2) Plaintiffs' action in reliance on that previous act,
13 statement, or admission; and (3) injury resulting from allowing Defendant
14 to contradict or repudiate the prior act, statement, or admission. *City*
15 *of Seattle v. St. John*, 166 Wash.2d 941, 948 (2009). Equitable estoppel
16 is not favored, and the party asserting estoppel must prove each of the
17 elements by clear, cogent, and convincing evidence." *Peterson v. Groves*,
18 111 Wash.App. 306, 310 (2002). Because Mr. Rozmus cannot establish that
19 Stanley Steemer took any act or made any statement or admission
20 inconsistent with its later termination of his franchise rights, Mr.
21 Rozmus's equitable estoppel claim fails. Summary judgment is granted in
22 favor of Defendant.

23 **6. Washington FIPA Violations**

24
25 Mr. Rozmus's first contention that FIPA was violated regarding lack
26 of notice and opportunity to cure has been analyzed above, in which the

1 Court found no violation. The second allegation of a FIPA violation
2 concerns the good faith provision of 19.100.180(1) of FIPA. This
3 provisions reads: "The parties shall deal with each other in good
4 faith." Section (1), however, does not override express terms of a
5 written contract: "While the scope of the contractual duty of good faith
6 may have been unclear when FIPA was enacted, Washington courts have since
7 recognized that the duty of good faith does not operate to create rights
8 not contracted for, nor does it override the express terms of a
9 contract." *Doyle v. Nutrilawn U.S., Inc.*, 2010 WL 1980280, at *8
10 (W.D.Wash. May 17, 2010) (citations omitted).
11

12 Plaintiffs have presented no evidence to demonstrate that Stanley
13 Steemer violated its good faith obligations. The Plaintiffs argue
14 predominantly that between Mr. Fleetwood and Mr. Bates (the CEO whom Mr.
15 Fleetwood considered to be a friend), the latter made repeated assurances
16 that he would protect Mr. Fleetwood's franchise from termination, that
17 he was the only person at Stanley Steemer with the power to terminate,
18 and that Stanley Steemer would make his franchise work. In the
19 opposition brief to Defendant's summary judgment motion regarding Rozmus
20 Plaintiffs, Mr. Rozmus argues that he too trusted and relied on Stanley
21 Steemer's assurances that it would "make it work" and everything would
22 be "ok." Ct. Rec. 119, at 34.
23

24 The Court finds that these statements are akin to supportive
25 commentary and opinion rather than words rising to the level of extra-
26 contractual promises. The evidence indicates that Plaintiff Rozmus (and

1 Plaintiff Fleetwood) were independent businessmen with years of
2 experience with the Stanley Steemer system and franchise operation.
3 Having found no breach of the implied covenant of good faith and fair
4 dealing, this Court finds that this claim must be denied also and summary
5 judgment granted in favor of Defendant.

6
7 **7. Washington CPA Violation**

8 Mr. Rozmus's claim under Washington's Consumer Protection Act
9 ("CPA") is premised primarily on the alleged FIPA violations. However,
10 FIPA was not violated. Further, Plaintiffs cannot meet the elements for
11 a private right of action under the CPA. The elements are "(1) unfair
12 or deceptive act or practice; (2) occurring in trade or commerce; (3)
13 public interest impact; (4) injury to plaintiff in his or her business
14 or property; (5) causation." *Hangman Ridge Training Stables, Inc. v.*
15 *Safeco Title Ins. Co.*, 105 Wash.2d 778, 780 (1986).

16 Plaintiffs have not shown any direct "unfair or deceptive act or
17 practice" arising from the alleged FIPA violation. Further, under the
18 "public interest" prong, parties with "a history of business experience"
19 cannot claim a CPA violation because they are "not representative of
20 bargainers [who are] subject to exploitation and unable to protect
21 themselves." *Hangman*, 105 Wash.2d at 794.

22 Finally, as discussed above in connection with Mr. Rozmus's FIPA
23 claim, Mr. Rozmus cannot show he was prejudiced or damaged in any way.
24 Therefore, he cannot establish the final two elements of his CPA claim:
25 damages and causation.
26

1 "If any element is not satisfied, there can be no successful CPA
2 claim." *Robinson v. Avis Rent A Car Sys., Inc.*, 106 Wash.App. 104, 114
3 (2001). For these reasons, Mr. Rozmus's CPA claim fails.

4 **C. Defendant's Motion for Summary Judgment Regarding Fleetwood**

5 The Complaint alleges damages for breach of fiduciary duty, unjust
6 enrichment, failure of consideration, breach of contract/breach of the
7 implied covenant of good faith and fair dealing, equitable estoppel, and
8 violations of Washington's Franchise Investment Protection Act and
9 Consumer Protection Act. Defendant Stanley Steemer asserts it is
10 entitled to summary judgment on each of these claims.
11

12 Additionally, Defendant argues that Mr. Fleetwood continues to
13 perform carpet-and-upholstery cleaning services in a new business called
14 Tedy Fresh, which is directly in violation of the noncompete provision
15 contained in the Franchise Agreement. That provision provides that once
16 the franchise relationship is terminated, Mr. Fleetwood may not perform
17 any carpet-and-upholstery cleaning services within the franchise
18 territory for two years unless he remits to Stanley Steemer payment equal
19 to 7% of his gross sales. It is undisputed that Mr. Fleetwood had gross
20 sales of \$204,929.43 from September through April 3, 2010, which would
21 entitle Stanley Steemer to \$14,344.92 in royalties, of which Mr.
22 Fleetwood has paid only \$2,337.59, just prior to the preliminary
23 injunction hearing that was resolved early in this case. Defendant
24 asserts Mr. Fleetwood owes \$12,007.33 plus 7% of all revenue generated
25 by any competing business from April 3, 2010 through August 28, 2011.
26

1 Additionally, Defendant argues that Stanley Steemer guaranteed
2 certain vehicle leases entered into by Wolverine, Inc., in 2005.
3 Wolverine defaulted on the leases, Mr. Fleetwood failed to pay his
4 guaranty, and, as a result, Stanley Steemer was required to pay
5 \$138,284.77 as a co-guarantor.¹⁶ Defendant is requesting reimbursement
6 of amounts paid by Stanley Steemer under the vehicle lease guarantees,
7 in the amount of \$69,142.39 from Mr. Fleetwood.

8 Defendant further argues that under the parties' Franchise Agreement
9 and Franchise Termination Agreement (covering amounts arising on and
10 after May 2005), Mr. Fleetwood owes \$100,581.78 for past-due royalty
11 payments; \$45,098.28 for advertising and marketing fees; \$10,886.45 for
12 local telephone fees; \$1,225.83 for parts and miscellaneous invoices; and
13 \$11,034.86 for service charges, for a total exceeding \$168,827.20, plus
14 interest.
15

16 Finally, Defendant seeks judgment for the delinquent amount under
17 the May 2005 note for \$356,371.91 in principal and interest.

18 These undisputed facts, Defendant argues, establish that Stanley
19 Steemer is entitled to judgment as a matter of law under Plaintiff
20 Fleetwood's claims against it and that it is entitled to judgment against
21 Fleetwood for the outstanding amounts owed to it for a total judgment of
22 \$606,348.83, plus interest and damages that continue to accrue. As
23 against Plaintiff Wolverine, Inc., Defendant is requesting judgment in
24

25
26 ¹⁶Mr. Fleetwood sets forth a couple of theories, however, as to why
he shouldn't have to reimburse Defendant for the amounts paid under the
vehicle lease guarantees.

1 the amount of \$138,248.77, for reimbursement of amounts paid by Stanley
2 Steemer under the vehicle lease guarantees.

3 **1. Breach of Fiduciary Duty**

4 Plaintiffs Fleetwood and Rozmus collectively argue identical claims
5 with slight variances in the facts. The Court will incorporate its
6 findings from Mr. Rozmus's identical claims and indicate where any
7 differences lie with respect to Mr. Fleetwood.

8 The tenet of Mr. Fleetwood's argument with respect to fiduciary duty
9 breach is identical to Mr. Rozmus's argument. Mr. Fleetwood also cites
10 one other factor that Mr. Rozmus does not, and that is, he alleges a
11 close personal relationship with Mr. Bates, the CEO of Stanley Steemer
12 and that he relied on Mr. Bates's advice to grow rapidly, purchase
13 expensive advertising, spend money on additional vans, and increase his
14 credit line. Mr. Fleetwood argues that Mr. Bates in essence assured him
15 that he would not be terminated.

16 Defendant submits that *Burger King v. Austin*¹⁷ is instructive,
17 finding that a franchise relationship is not a fiduciary relationship and
18 that the express language in a franchise agreement, stating that there
19 was no fiduciary relationship, is controlling.

20 This Court finds Defendant's argument convincing for the reasons set
21 forth above in the motion for summary judgment against Plaintiff Rozmus.
22

23
24 ¹⁷805 F. Supp. 1007, 1019-20 (S.D. Fla. 1992) (concluding that such
25 provisions weigh against a finding of a fiduciary relationship); *Allen*
26 *v. Hub Cap Heaven, Inc.*, 484 S.E.2d 259,264 (Ga. Ct. App. 1997) (same).
Given the dearth of Washington case law regarding franchise termination
and similar issues, the Court looks to cases from various districts.

1 Although the advice that Mr. Fleetwood received from Mr. Bates did not
2 achieve the results anticipated by Mr. Fleetwood, there are no material
3 facts in dispute that justify this claim going forward. For these
4 reasons, Plaintiff Fleetwood's breach of fiduciary duty claim is denied
5 and summary judgment is granted in favor of Defendant.

6 **2. Unjust Enrichment**

7 The Court finds that the argument of Plaintiff Fleetwood is similar
8 to Plaintiff Rozmus's and concludes Mr. Fleetwood's unjust enrichment
9 claim is without merit. Summary judgment is granted in favor of
10 Defendant.
11

12 **3. Failure of Consideration**

13 The Court finds that the argument of Plaintiff Fleetwood is similar
14 to Plaintiff Rozmus's and concludes Mr. Fleetwood's failure of
15 consideration claim is without merit. Summary judgment is granted in
16 favor of Defendant.

17 **4. Breach of Contract/Breach of the Implied Covenant of Good** 18 **Faith and Fair Dealing**

19 The Court finds that the argument of Plaintiff Fleetwood is similar
20 to Plaintiff Rozmus's and concludes Mr. Fleetwood's breach of contract
21 and breach of the implied covenant of good faith and fair dealing is
22 without merit. Summary judgment is granted in favor of Defendant.

23 **5. Equitable Estoppel**

24 The Court finds that the argument of Plaintiff Fleetwood is similar
25 to Plaintiff Rozmus's and concludes Mr. Fleetwood's equitable estoppel
26 claim is without merit. Summary judgment is granted in favor of

1 Defendant.

2 **6. Washington FIPA Violations**

3 As to Mr. Fleetwood, the Court finds no violation of FIPA with
4 regard to notice of default and opportunity to cure. Mr. Fleetwood
5 received a second 30-day notice in 2008. As to the alleged good faith
6 provision violation, the Court similarly finds Plaintiff Fleetwood has
7 presented no evidence to demonstrate that Stanley Steemer violated its
8 good faith obligations. Having found no breach of the implied covenant
9 of good faith and fair dealing either, this Court finds that this claim
10 must be denied and summary judgment granted in favor of Defendant.
11

12 **7. Washington CPA Violation**

13 The argument of Plaintiff Fleetwood is similar to Plaintiff Rozmus's
14 and concludes Mr. Fleetwood's Consumer Protection Act violation is
15 without merit. Summary judgment is granted in favor of Defendant.

16 **IT IS HEREBY ORDERED:**

17 1. Plaintiffs Lucinda and Rex Rozmus's Motion for Partial Summary
18 Judgment, **Ct. Rec. 79**, is respectfully **DENIED**.

19 2. Defendant Stanley Steemer International's Motion for Summary
20 Judgment Regarding Rex and Lucinda Rozmus, **Ct. Rec. 94**, is **GRANTED, in**
21 **part** and **RESERVED, in part**. In light of the ruling granting summary
22 judgment in favor of Defendant, and having found the 2008 agreement was
23 fully performed and enforceable, the parties shall provide supplemental
24 briefing as to whether any amounts are due and owing from the Rozmus
25 Plaintiffs and if so, the means by which amounts should be calculated.
26

